

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 78-251)

Antidumping—Large Power Transformers From Switzerland

The Secretary of the Treasury makes public a revocation of the finding of dumping with respect to large power transformers from Switzerland; section 153.46, Customs Regulations, amended

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE

PART 153—ANTIDUMPING

NOTICE OF MODIFICATION OR REVOCATION OF DUMPING FINDING

AGENCY: U.S. Treasury Department.

ACTION: Revocation of dumping finding.

SUMMARY: This notice is to inform the public that large power transformers from Switzerland are no longer being sold at less than fair value under the Antidumping Act, 1921. In addition, the Swiss seller has given assurances that future sales will not be at less than fair value. As a result of this action, shipments of large power transformers from Switzerland which were entered, or withdrawn from warehouse for consumption, on or after July 16, 1976, will not be liable for special dumping duties.

EFFECTIVE DATE: July 26, 1978.

FOR FURTHER INFORMATION CONTACT: David P. Mueller, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229; telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 14, 1972, a finding of dumping with respect to large power transformers from Switzerland was published in the Federal Register as T.D. 72-163 (37 FR 11773). A "Notice of Tentative Determination to Modify or Revoke

Dumping Finding" with respect to this merchandise was published in the Federal Register of July 16, 1976 (41 FR 29435).

Reasons for the tentative determination were published in the above-mentioned notice and interested persons were afforded an opportunity to provide written submissions or request the opportunity to present oral views in connection therewith.

Subsequent to publication of the tentative revocation, it was discovered that several large power transformers had been imported from Switzerland during the period between the dumping finding and the tentative revocation. Accordingly, Customs requested and received appropriate information on those imports and on contemporaneous home market sales. Analysis of that information reveals no sales at less than fair value.

Having considered all submissions, and being satisfied that all importations of transformers prior to July 16, 1976, have been made at not less than fair value, I hereby determine that, for the reasons stated in the "Notice of Tentative Derermination to Modify or Revoke Dumping Finding," large power transformers from Switzerland are not being, nor are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.), and T.D. 72-163 is hereby revoked.

Accordingly, section 153.46 of the Customs Regulations (19 CFR 153.46) is amended by deleting the reference to large power transformers from Switzerland (T.D. 72-163).

This notice is published pursuant to section 153.44(d) of the Customs Regulations (19 CFR 153.44(d)).

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173).

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

[Published in the Federal Register July 26, 1978 (43 FR 32293)]

(T.D. 78-252)

Bonds

Approval and discontinuance of carrier bonds, Customs form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow.

"PB" refers to a previous bond, dated as represented by figures in parantheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Arid Van Lines, Inc., 1340 Chesapeake Ave., Baltimore, MD; motor carrier; United States Fidelity & Guaranty Co.	Apr. 25, 1978	Apr. 25, 1978	Baltimore, MD; \$50,000
Checker Express Co., 6801 South 13th St., Milwaukee, WI; motor carrier; Aetna Ins. Co.	Nov. 29, 1976	June 29, 1978	Milwaukee, WI; \$25,000
DSI Transports, Inc., P.O. Box 1505, Houston, TX; motor carrier; Travelers Indemnity Co.	June 21, 1978	June 22, 1978	Houston, TX; \$20,000
Federal Transfer Co., Inc., 270 So. Hanford St., Seattle, WA; motor carrier; Safeco Ins. Co. of America (PB 11/17/72) D 7/8/78 ¹	July 9, 1978	July 9, 1978	Seattle, WA; \$25,000
General Cartage Co., South 20 West 22971 Pearl St., Waukesha, WI; motor carrier; The Travelers Indemnity Co. (PB 8/15/77) D 8/15/78	June 13, 1978	June 23, 1978	Milwaukee, WI; \$25,000
Hall's Motor Transit Co., 6000 Carlisle Pike, Mechanicsburg, PA; motor carrier; Ins. Co. of North America	June 18, 1978	June 19, 1978	Philadelphia, PA; \$25,000
Nationwide Auto Transporters, Inc., 140 Sylvan Ave., Englewood Cliffs, NJ; motor carrier; Peerless Ins. Co.	May 10, 1978	May 17, 1978	Baltimore, MD; \$50,000
Nolte Bros. Truck Line, Inc., 4800 Colorado Blvd., Denver, CO; motor carrier; Reliance Ins. Co.	May 22, 1978	June 21, 1978	El Paso, TX; \$25,000
Overseas Transportation Co., Inc., Eaton & Francis Streets, Key West, FL; motor carrier; The Fidelity & Deposit Co. of MD. D 4/9/78	Apr. 10, 1956	May 17, 1956	Miami, FL; \$15,000
Pacific Intermountain Express Co. and All States Trucking, a Div. of Pacific Intermountain Express Co. (P.I.E.), P. O. Box 958, Oakland, CA; motor carrier; American Casualty Co. (PB 3/15/77) D 3/23/78 ²	Mar. 23, 1978	Mar. 23, 1978	San Francisco, CA; \$50,000
Puget Sound Truck Lines, P.O. Box 24526, Seattle, WA; motor carrier; Peerless Ins. Co. (PB 1/17/78) D 9/7/77 ³	Sept. 8, 1977	Sept. 8, 1977	Seattle, WA; \$25,000
Pyramid Van Lines, Inc., Towne Services Leasing Co. of El Paso, Inc., Towne Services Leasing Co. of Killeen, Inc., Towne Services Leasing Co. of San Antonio, Inc., Towne Int'l Forwarding, Inc., 1935 Sable Lane, San Antonio, TX; motor carrier; Hartford Accident and Indemnity Co. (PB 12/23/73) D 5/26/78 ⁴	Dec. 23, 1977	May 26, 1978	Laredo, TX; \$25,000
Sundance Freight Lines, Inc. d/b/a Sundance Transportation, P.O. Box 7676, Phoenix, AZ; motor carrier; Transport Indemnity Co. (PB 6/4/71) D 2/27/78 ⁵	Jan. 30, 1978	Feb. 27, 1978	El Paso, TX; \$25,000

See footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
J. B. Williams Express, Inc., 320 Maspeth Ave., Brooklyn, NY; motor carrier; American Motorists Ins. Co. (PB 4/24/75) D 6/8/78 *	June 7, 1978	June 8, 1978	New York Seaport; \$50,000

* Surety is United States Fidelity & Guaranty Co.

† Principal is Pacific Intermountain Express Co.

‡ Principal is Puget Sound Truck Lines, Inc. Surety is United States Fidelity & Guaranty Co.

§ Principal is Towne Services Household Goods Transportation Co., Inc., Towne Services Leasing Co. of El Paso, Inc., Towne Services Leasing Co. of Killeen, Inc., Towne Services Leasing Co. of San Antonio, Inc., Towne International Forwarding, Inc., and Container Transport International, Inc. Surety is National Surety Corp.

¶ Principal is Whitfield Transportation, Inc.

‡ Surety is Midland Ins. Co.

(BOH-3-03)

Dated: July 24, 1978.

DONALD W. LEWIS,
For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings.

(T.D. 78-253)

TITLE 19—CUSTOMS DUTIES

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 159—LIQUIDATION OF DUTIES

Sugar From the European Community

Final countervailing duty determination

AGENCY: U.S. Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that benefits are granted to producers and growers of sugar by the European Community (EC) which constitute bounties or grants within the meaning of the Countervailing Duty Law.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT: Richard B. Self, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220; 202-566-8585.

SUPPLEMENTARY INFORMATION: On June 30, 1978, a notice of "Initiation of Countervailing Duty Investigation and Preliminary

Determination" was published in the Federal Register (43 FR 28599). This notice stated that an investigation was being initiated under section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the act") in response to a petition alleging that so-called restitution payments made upon exportation to sugar growers and processors in the EC under the common agricultural policy (CAP) constitute a bounty or grant under section 303 of the act. That notice further stated that based upon evidence already available regarding the operation of the CAP in previous countervailing duty investigations, it was appropriate at the same time to issue a preliminary determination pursuant to section 303(a)(4) of the act (19 U.S.C. 1303(a)(4)), that bounties or grants are being paid or bestowed on the items subject to this investigation. The European Community consists of Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom. The sugar covered by this investigation enters the United States under items Nos. 155.20 and 155.30 of the Tariff Schedules of the United States. All imports of this product are dutiable.

The submission of comments by interested parties by July 17, 1978, was invited but none have been received. The preliminary determination also stated that a final determination was expected in advance of December 16, 1978. The preliminary determination was based in part upon available information concerning the operation of the export restitution payments under the CAP developed in previous countervailing duty investigations involving other products. Further investigation has revealed that with respect to sugar, the CAP operates differently than it does with respect to the other agricultural products previously investigated. These differences relate primarily to the method by which the export restitutions are financed and the fact that there is a limit on the amount of sugar eligible to receive the payments. With respect to the latter, information available indicates that the sugar exported to the United States is eligible for, and may in fact receive, the restitution payments.

The export restitution payments are financed in part out of levies collected by the EC member states from sugar producers and in part out of funds from the guidance and guarantee fund (GGF) operated under the CAP. Other agricultural products receive their export restitutions entirely from the GGF. Despite this different method by which the funds are raised, it has been determined that the payment of export restitutions on sugar operates in a manner identical to that in which export restitutions are paid on other agricultural products, which Treasury has previously determined constitute a "bounty or grant."

After consideration of the available information, it is hereby determined that sugar from the European Community benefits from bounties or grants within the meaning of section 303 of the act. The bounties or grants are in the form of export restitution payments made by the EC under the CAP as described above. Accordingly, notice is hereby given that sugar covered by this investigation which is imported directly or indirectly from the EC, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the act and until further notice, the net amount of such bounties or grants has been ascertained and determined to be 10.8 cents per pound of sugar. This amount represents the average maximum restitution level set by the EC for sugar exports during the first half of 1978. Although sugar exporters may on particular shipments receive less than the maximum restitution, the level of which is set at least every 2 weeks by the EC, it has been determined that this figure represents an accurate approximation of the subsidy being paid on recent shipments to the United States.

Effective on or after the publication date of this notice, and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such dutiable sugar imported directly or indirectly from the EC, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of sugar from the EC are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production, or exportation of sugar from the EC.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country," the name "European Community (Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom)," and inserting the word "sugar," in the column headed "Commodity," the number of this

Treasury decision in the column headed "Treasury decision" and the words "Bounty Declared-Rate" in the column headed "Action."

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47) insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

Dated: July 21, 1978.

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

[Published in the Federal Register July 31, 1978 (43 FR 33237)]

U.S. Customs Service

Proposed Rulemaking

The following notice of proposed rulemaking was recently published in the Federal Register. The Customs Service welcomes comments from the public in regard to the proposal. The comments must be in writing, addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229, and must be received on or before the date specified in the notice.

ROBERT E. CHASEN,
Commissioner of Customs.

(19 CFR Part 123)

Customs Relations With Canada and Mexico

Notice of proposed rulemaking amending the customs regulations relating to violations in manifests for vehicles and certain vessels arriving from Canada or Mexico

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish uniform procedures for handling discrepancies in the manifests of vehicles and certain vessels arriving from Canada or Mexico. The proposed rule is intended to provide instructions for the public and Customs officers to insure uniform treatment of all cases involving a discrepancy in a manifest.

DATES: Comments must be received on or before: August 28, 1978.

ADDRESSES: Written comments should be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Comments submitted will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and

Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5706.

SUPPLEMENTARY INFORMATION: The U.S. Customs Service proposes to amend section 123.9 of the Customs Regulations (19 CFR 123.9). The present regulations do not satisfactorily state the applicable statutory provisions or outline the procedures to be followed in situations involving incorrect manifests. The proposed amendment is designed to promote uniform treatment in cases involving discrepancies in manifests for vessels of less than 5 net tons arriving otherwise than by sea from Canada or Mexico and all vehicles arriving from Canada or Mexico.

For the purposes of the Customs Regulations, vessels which arrive in the United States "otherwise than by sea" generally are those which arrive via the Great Lakes or via rivers or other inland waters. However, no precise definition of the term "otherwise than by sea" governs every case. The Customs Service has ruled that a vessel arriving from Mexico via the Falcon Reservoir arrives "otherwise than by sea." On the other hand, in *Border Line Transportation Co. v. Haas*, 128 F. 2d 192 (Ninth Circuit 1942), cert. den. 318 U.S. 763, the court held that a vessel arriving from British Columbia via the Strait of Juan de Fuca arrived "by sea."

Interested parties desiring specific information with regard to whether a particular arrival will be considered as "otherwise than by sea" may contact the district director of Customs in the Customs district where the intended port of arrival is located. A list of Customs districts and ports is found in section 101.3 of the Customs Regulations (19 CFR 101.3). A ruling with respect to a particular arrival also may be obtained from Customs Service Headquarters, attention: Carriers, Drawback, and Bonds Division, Washington, D.C. 20229, by following the procedures outlined in part 177 of the Customs Regulations (19 CFR, pt. 177).

DISCUSSION OF PROPOSED CHANGES

CHANGING THE SECTION HEADING

The heading of section 123.9 of the Customs Regulations (19 CFR 123.9) entitled "Correction of manifest" implies that the filing of the Discrepancy Report and Declaration, Customs Form 5931, corrects a manifest so as to relieve a person from a penalty. The proposed amendment would change the heading to read "Explanation

of a discrepancy in a manifest." This change is intended to avoid creating any implication that the filing of the Discrepancy Report and Declaration, Customs Form 5931, corrects the manifest and cancels any liability arising under section 460 or 584, Tariff Act of 1930, as amended (19 U.S.C. 1460, 1584).

STATUTORY BASIS OF A VIOLATION

Section 123.9 of the Customs Regulations (19 CFR 123.9) applies to vessels of less than 5 net tons arriving otherwise than by sea from Canada or Mexico and to all vehicles arriving from Canada or Mexico. Those vessels and vehicles are required to file a correct manifest with the U.S. Customs Service on arrival in the United States. Paragraph (a) of section 123.9 cites section 440 of the Tariff Act of 1930, as amended (19 U.S.C. 1440), as prescribing the penalty for failing to correct a manifest by a post entry and section 584 of the Tariff Act of 1930, as amended (19 U.S.C. 1584), as prescribing the penalty for filing an incorrect manifest. The citation of section 440 is incorrect, and the citation of section 584 is misleading, for the following reasons.

Section 440 concerns the filing of a post entry to correct a manifest on a vessel from a foreign port required to make entry. That section does not apply to vessels of less than 5 net tons arriving otherwise than by sea from Canada or Mexico or to vehicles arriving from Canada or Mexico. Accordingly, the reference to section 440 is deleted from proposed section 123.9.

Section 460 of the Tariff Act of 1930, as amended (19 U.S.C. 1460) is applicable to vessels of less than 5 net tons arriving otherwise than by sea from Canada or Mexico and to vehicles arriving from Canada or Mexico. For violations involving those vehicles and vessels, section 460 rather than section 584 is the proper authority for violations that are covered by both statutes because section 460 is more specific in scope. Paragraph (a) of proposed section 123.9 details the specific situations covered by sections 460 and 584.

Penalties should be assessed under section 460 if a manifest is not filed or if it fails to include all of the merchandise imported or brought in on those vessels or vehicles. On the other hand, a penalty would be assessed under section 584 if a manifest listed merchandise that is not found on board a vehicle or a vessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico.

REPORT OF DISCREPANCY

Paragraph (b) of section 123.9 of the Customs Regulations (19 CFR 123.9(b)) establishes a procedure for reporting discrepancies in a manifest to the Customs Service. The present procedure is limited to the situation where a private individual discovers the discrepancy.

Proposed section 123.9(b) is divided into two parts. The first part concerns the situation where a private individual discovers the discrepancy. The proposal states the 60-day time period from the date of arrival for a private individual to report the discrepancy to the district director of Customs who received the original manifest. Previously, section 123.9 referred to the time limits set in section 4.12 of the Customs Regulations (19 CFR 4.12). Stating the time limit in the proposed section will eliminate the need to refer to another section. The second part of proposed section 123.9(b) concerns the situation where a Customs officer discovers the discrepancy before it is reported to the Customs Service. In this part of the proposed section there is a requirement for the district director concerned to notify the private individual of the discrepancy. The proposal also requires the private individual to explain the discrepancy within 30 days of the district director's notification or within 60 days after arrival, whichever is later.

ACTION ON DISCREPANCY REPORT

The proposal would add a new paragraph (d) to section 123.9 of the Customs Regulations (19 CFR 123.9). This new paragraph establishes guidelines for remitting a penalty assessed for violation of section 460 of the Tariff Act of 1930, as amended (19 U.S.C. 1460). These guidelines would also be used in determining whether to assess a penalty under section 584 of the Tariff Act of 1930, as amended (19 U.S.C. 1584).

SETTING PENALTY AMOUNT

Proposed new paragraph (e) of section 123.9 of the Customs Regulations (19 CFR 123.9) provides instructions for setting the amount of the penalty. The proposed paragraph cross-references section 162.43 of the Customs Regulations (19 CFR 162.43) which establishes rules for appraising merchandise subject to a penalty under the Customs laws. The cross-reference to section 162.43 is used because the appraisement rules themselves are too lengthy to repeat in proposed paragraph (e). Previously, section 123.9(a) contained a reference to section 4.12 of the Customs Regulations (19 CFR 4.12) which, in turn, referred to section 162.43. The new paragraph would reduce the amount of cross-referencing.

EFFECT OF LACK OF KNOWLEDGE

Proposed new paragraph (f) of section 123.9 of the Customs Regulations (19 CFR 123.9) makes it clear that lack of knowledge of a discrepancy by a private individual does not relieve that individual from a penalty. This concept is a carryover from present section

123.9(a). Previously, section 123.9(a) referenced section 4.12 of the Customs Regulations (19 CFR 4.12) which contained the concept. The proposed paragraph would eliminate the need for that cross-reference.

DEFINITION OF CLERICAL ERROR OR OTHER MISTAKE

The proposed amendment provides a definition of the term "clerical error or other mistake." That term is already defined in sections 4.12(a)(5) and 6.7(h)(5) of the Customs Regulations (19 CFR 4.12(a)(5), 6.7(h)(5)). However, although the definition of clerical error or other mistake is important with respect to handling cases involving discrepancies in manifests, the term has not been defined in section 123.9 of the Customs Regulations (19 CFR 123.9). The proposed amendment would add a new paragraph (g) to section 123.9 that would contain the definition of "clerical error or other mistake" used in sections 4.12(a)(5) and 6.7(h)(5).

Accordingly, the U.S. Customs Service proposes to amend section 123.9 of the Customs Regulations (19 CFR 123.9) and the heading of that section to read as follows:

§ 123.9 Explanation of a discrepancy in a manifest

(a) Provisions applicable.

(1) *Failure to file a manifest; overages.*—If there is a failure to file a manifest in accordance with section 123.5 or merchandise is found that is not listed on the manifest filed in accordance with section 123.5 (an overage), the merchandise and the vessel or vehicle in which it was brought or imported into the United States are subject to forfeiture and the master of the vessel or the person in charge of the vehicle is liable, in addition to any other penalty, to a penalty equal to the value of the merchandise under section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460).

(2) *Shortages.*—If merchandise is manifested but not found on board (a shortage), the master of the vessel or other person in charge or the owner of that vessel or vehicle shall be subject to a penalty of \$500 under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(b) Report of discrepancies.

(1) *Discrepancies discovered by master or person in charge.*—The master, person in charge, or agent of the vessel or vehicle shall report all discrepancies to the district director within 60 days after the date of arrival by completion of a report for an overage or a declaration for a shortage. The overage report or shortage declaration may be made on the appropriate manifest form, as listed in section 123.4,

or on Customs Form 5931: Discrepancy Report and Declaration. If no manifest had been filed, an original copy of the appropriate form, as listed in section 123.4 should be used. In each case where a manifest form is used, it shall be marked or stamped "Overage Report" or "Shortage Declaration," as appropriate. The form used shall list the merchandise involved and state the reasons for the discrepancy.

(2) *Discrepancies discovered by Customs.*—The district director shall immediately advise the master, person in charge, owner, or agent of any discrepancies discovered by Customs officers which have not been reported by the master, person in charge, owner, or agent. Thereafter, such master, person in charge, owner, or agent shall file an explanation of the discrepancy as required by paragraph (b)(1) of this section within 30 days of that notification or within 60 days after arrival of the vessel or vehicle, whichever is later. The district director may notify the master, person in charge, owner, or agent of a discrepancy by furnishing a copy of Customs Form 5931 to that person, or by any other appropriate means.

(c) *Statement on report of discrepancy required.*—The overage report or shortage declaration shall bear the following statement signed by the master of the vessel, the person in charge of the vehicle, the owner of the vessel or vehicle or an authorized agent:

"I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support a claim of nonimportation or proper disposition of merchandise will be retained in the carrier's files for a period of at least 1 year from the date of this report of discrepancy and will be made available to Customs upon demand."

(d) *Action on the discrepancy report.*—Any penalty or liability to forfeiture incurred under 19 U.S.C. 1460 shall be remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), and in accordance with the proviso of 19 U.S.C. 1584, no penalty or liability to forfeiture shall be incurred under 19 U.S.C. 1584, if—

- (1) There is a timely filing of the manifest discrepancy report;
- (2) There has been no loss of revenue;
- (3) The district director is satisfied that the discrepancy resulted from clerical error or other mistake; and
- (4) In the case of a discrepancy not initially reported by the master, a person in charge, owner, or agent, the district director is satisfied that there was a valid reason for the failure to so report.

Otherwise, applicable penalties under 19 U.S.C. 1460 and 1584 shall be assessed and the vessel or vehicle shall be liable to forfeiture (see sec. 162.31 of this chapter).

(e) *Penalty assessment.*—For the purpose of assessing penalties under 19 U.S.C. 1460 or 1584, the value of the merchandise shall be determined as prescribed in section 162.43 of this chapter.

(f) *Lack of knowledge does not relieve liability.*—The fact that the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle had no knowledge of a discrepancy shall not relieve the master, the person in charge, or the owner from a penalty, or the vessel or vehicle from liability to forfeiture, incurred under 19 U.S.C. 1460 and 1584.

(g) *Clerical error or other mistake defined.*—For the purpose of this section, the term "clerical error or other mistake" is defined as a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same individuals may be considered the result of negligence and not clerical error or other mistake.

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), and section 624, 46 Stat. 759 (19 U.S.C. 1624).

R. E. CHASEN,
Commissioner of Customs.

Approved: July 18, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[Published in the Federal Register July 28, 1978 (43 FR 32817)]

(19 CFR Part 141)

Entry of Merchandise

Proposed amendment to the customs regulations relating to additional information required on invoices for footwear

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by consolidating and updating the information required on invoices of imported footwear. Customs has determined that much of the information now required, which generally is descriptive of footwear, no longer is necessary, and other information, relating to the construction of footwear, is necessary. The information is used to establish the correct tariff classification of imported footwear and to assist in its appraisement.

DATE: Comments must be received on or before September 26, 1978.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Mahoney, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Invoices of merchandise imported into the United States are required by section 481 of the Tariff Act of 1930 (19 U.S.C. 1481) to include certain specified information and "any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require." Section 141.89, Customs Regulations (19 U.S.C. 141.89), requires additional information on invoices of footwear classifiable under schedule 7, part 1A, Tariff Schedules of the United States (19 U.S.C. 1202).

The additional information enables the Customs Service to establish the correct tariff classification of imported footwear and assists Customs in determining whether or not an imported article of footwear is like or similar to footwear made in the United States for purposes of appraisement under the American selling price procedure described in section 152.24, Customs Regulations (19 CFR 152.24).

Because footwear manufacturing methods have changed since the additional reporting requirements were established, much of the information now required, which generally is descriptive of footwear, no longer is necessary, and other information, relating to the construction of footwear, is needed. It is proposed to amend section 141.89 to reflect these changes and to consolidate and simplify the information reporting requirements.

COMMENTS

The Customs Service invites written comments from all interested parties on the proposed amendment. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, room 2335, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Paul G. Hegland, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AUTHORITY

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 1481, 1484, 1624), and 77A Stat. 14 (19 U.S.C. 1202 (General Headnote 11, Tariff Schedules of the United States)).

PROPOSED AMENDMENT

It is proposed to amend section 141.89 of the Customs Regulations (19 CFR 141.89) by substituting a new paragraph for footwear, in appropriate alphabetical order, to read as follows:

PART 141—ENTRY OF MERCHANDISE

§ 141.89 Additional information for certain classes of merchandise.

* * * * *

Footwear classifiable under schedule 7, part 1A, Tariff Schedules of the United States—

- (1) The manufacturer's style number.
- (2) The importer's style number.
- (3) Component materials of upper with percentage (value) of each component (if fiber, and if fiber plus rubber and/or plastic is less than 50 percent, state the percentage by weight and value of each fiber used).
- (4) Component materials of entire article with percentage (value) of each component. If the materials in (3) and (4) are primarily of leather, answer only (10) and (11). Otherwise, answer all questions.
- (5) Component materials of sole with percentage (value) of each component.
- (6) Percentage of weight of entire article.
 - (a) Fiber.
 - (b) Rubber and/or plastic.
 - (c) Other (specify material).
- (7) Percentage of exterior surface area of upper:
 - (a) Leather.
 - (b) Rubber and/or plastic.
 - (c) Other (specify material).

(8) Whether there is a foxing-like band around bottom of upper.

(9) Whether the upper extends over the ankle.

(10) Type of construction:

(a) Cement.

(b) Molded or vulcanized.

(c) Turned.

(d) Unsoled moccasin.

(e) Welt.

(f) Other.

(11) If the component material of chief value of the entire article is leather, state if made on a male or female last. Customs Form 5523 may be used for furnishing the additional information.

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: July 17, 1978.

RICHARD J. DAVIS,

Assistant Secretary of the Treasury.

[Published in the Federal Register July 28, 1978 (43 FR 32819)]

ERRATUM

In CUSTOMS BULLETIN, volume 12, No. 27, dated July 5, 1978, in T.D. 78-183 on page 1, the fourth line from the bottom of the table should read:

Canadian Auto Carriers, Ltd., 1005 Derwent Wy March 6, 1978;
April 26, 1978, Seattle, Wash.

In CUSTOMS BULLETIN, volume 12, No. 27, dated July 5, 1978, in T.D. 78-184 on page 5, the fourth line from the bottom should read:

L.P.G., unfinished hydrocarbon mixture, unfinished

In CUSTOMS BULLETIN, volume 12, No. 13, dated March 29, 1978, T.D. 78-91, page 29:

The District Director for Searail, Inc., should be changed from Philadelphia, Pa., to Mobile, Ala.

In CUSTOMS BULLETIN, volume 12, No. 9, dated March 1, 1978, T.D. 78-63, page 44:

The principal Pairion Transport Inc., should be Quirion Transport Inc., and the street name should be changed from Naval to Laval.

In CUSTOMS BULLETIN, volume 12, No. 7, dated February 15, 1978, T.D. 78-43, page 22:

The principal Beasuvais Ltee should be Beauvais Ltee.

In CUSTOMS BULLETIN, volume 7, calendar year 1973, in T.D. 73-275 on page 790, make the following pen and ink change:

The last line in the table should read: Pa., water carrier; Insurance Co. of North America

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge
Samuel M. Rosenstein

Clerk
Joseph E. Lombardi

Abstracts

Abstracted Reappraisement Decisions

DEPARTMENT OF THE TREASURY, July 17, 1978.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/113	Newman, J. July 11, 1978	Christian Dior Per- fumes Corporation	R10/3000, etc.	Cost of production (items marked "A") Constructed value (items marked "B")	Respective unit values indicated in schedule "A" attached to deci- sion and judgment (items marked "A") Respective unit values indicated in schedule "B" attached to deci- sion and judgment (items marked "B")	Agreed statement of facts	New York Perfumery, including eau de toilette cologne and toilet waters, containing alcohol (items marked "A") Cosmetics and other toilet preparations, some containing alcohol; etc. (items marked "B")

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY, *July 27, 1978.*

The appended notices relating to investigations by the United States International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

CERTAIN FISH FROM CANADA

[303-TA-3]

Notice of Investigation, Public Hearing, and Request for Written Views

Having received advice from the Department of the Treasury on June 27, 1978, that a bounty or grant is being paid with respect to certain fish imported from Canada, entered under item numbers 110.1585, 110.1589, 110.4710, 110.4726, 110.7033, 110.7039, 111.2200, 111.6400, and 111.6800 of the Tariff Schedules of the United States Annotated, which merchandise is accorded duty-free treatment, the United States International Trade Commission on July 13, 1978 instituted investigation No. 303-TA-3 under section 303(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(b)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Public hearing. A public hearing in connection with the investigation will be held in Washington, D.C., at 10 a.m. e.d.t., on Tuesday, August 15, 1978, in the hearing room, U.S. International Trade Commission Building, 701 E Street NW. All interested persons will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be addressed to the Secretary, United States International Trade

Commission, 701 E Street NW., Washington, D.C. 20346, and should be received not later than noon Thursday, August 10, 1978.

Written statements.—In addition to, or in lieu of, an appearance at the hearing, interested persons are requested to submit to the Commission, in writing, any information pertinent to whether an industry in the United States is being or is likely to be injured or it prevented from being established, by reason of the importation of the subject fish from Canada. Written statements should be addressed to the Secretary of the Commission at the Commission's office in Washington, D.C., and should be submitted not later than Friday, August 18, 1978.

By order of the Commission:

Issued: July 14, 1978.

KENNETH R. MASON
Secretary.

In the Matter of CERTAIN THERMOMETER SHEATH PACKAGES	}	Investigation No. 337-TA-56
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Notice of Investigation

Notice is hereby given that a complaint was filed with the United States International Trade Commission on June 7, 1978, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Steridyne Corporation, 3670 East Industrial Way, Riviera Beach, Fla. 33404. The complaint alleges that unfair methods of competition and unfair acts exist in the importation of certain thermometer sheath packages into the United States, or in their sale, by reason of the alleged coverage of such articles by U.S. Letters Patents 3,552,555 and 3,847,280, and that such articles are being offered at prices below fair value and below cost. The complaint alleges that such unfair methods of competition and unfair acts have the effect or tendency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Complainant requests an order permanently excluding such articles from entry into the United States, and an order to cease and desist from selling or offering for sale such articles below their fair value.

Having considered the complaint, the United States International Trade Commission, on July 6, 1978, ORDERED—

(1) That pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation to be instituted to determine under subsection (c) whether, on the basis of the allegations set forth in the complaint and the evidence adduced, there is a violation of subsection (a) of this section in the unauthorized importa-

tion of certain thermometer sheath packages into the United States, or in their sale by reason of such thermometer sheath packages allegedly being covered by claims 1, 4, 5, 8, 9, 12, 13, 15, 16, 17, 18, and 19 of U.S. Letters Patent 3,552,558 and claims 1, 2, and 5 of U.S. Letters Patent 3,847,280, the effect of tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) Those portions of the complaint which allege a violation of section 337 by reasons of the imported articles being offered for sale at prices "below fair value and below cost" are dismissed for the reason that they do not, as presently set forth, allege an unfair method of competition or unfair act within the meaning of section 337.¹

(3) That, for the purpose of this investigation so instituted, the following are hereby named as parties:

(a) The complainant is:

Steridyne Corporation
3670 East Industrial Way
Riviera Beach, Florida 33404

(b) The respondents are the following companies alleged to be involved in the unauthorized importation of such articles into the United States, or in their sale, and parties upon which the complaint and this notice are to be served.

- (1) Astra-Sjucu, AB
Fack
S-402 20 Goteborg 5
Sweden
- (2) Medline Industries
1825 Sherman Road
Northbrook, Illinois 60062
- (3) Caring International
Division of Medline Industries
P. O. Box 777
Northbrook, Illinois 60062

¹ Commissioners Minchew and Alberger voted to dismiss those portions of the complaint that allege sales "below fair value and below cost" because they believe mere low pricing is not an unfair method or act, even if the prices are unreasonably low, below total cost or average total cost, or below "fair value" as complainant alleged. Low pricing is an unfair method or act when it occurs as a result of predatory intent, that is, an intent to destroy competition and dominate a market. This intent can be inferred, if low prices are present, from specific occurrences which have a commercial context that strongly suggest predation; and the Commission has held that, where prices of an imported article are set below marginal cost for a sustained period without commercial justification, intent can be inferred. However, in such a complaint the specifics of predatory intent should be pleaded. On the basis of this complaint, there is no possibility of such intent, since the complaint itself alleges that the low prices are for the purpose of getting "customers and dealers of complainant to switch from complainant's sheath package to the imported infringing product." This is hardly an anticompetitive, or predatory, motive.

(c) Louis S. Mastriani, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigation attorney, a party to this investigation.

(4) That, for the purpose of the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Commission, 701 E Street NW., Washington, D.C. 20436, is hereby granted the power to designate the presiding officer.

Responses must be submitted by named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure, as amended (19 CFR 210.21). Pursuant to section 201.16(d) and 201.21(a) of the Rules such response will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complainant and of this notice, and will authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination, respectively, containing such findings.

The complaint is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the New York City Office of the Commission, 6 World Trade Center.

By order of the Commission:

Issued: July 20, 1978.

KENNETH R. MASON,
Secretary.



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U.S. Customs Service

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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)



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